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EXAMINER

BEX, PATRICIA K

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 04/01/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/551,581

Applicant(s)

OTTO ET AL.

Examiner

P. Kathryn Bex

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2003 .
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7-11, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7, 8 and 10 is/are rejected.
- 7) ☒ Claim(s) 9, 11, 14 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_ .

### DETAILED ACTION

1. Applicant's arguments, see Amendment after Final, filed March 12, 2003, with respect to the rejection(s) of claim(s) 7-8, 10 under Abrams (USP 4,807,425) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Clark *et al* (USP 5,578,494), see below.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 7-8, 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark *et al* (USP 5,578,494).

Clark *et al* teach a method and device for opening and closing reagent vials 30, 30', 441. The apparatus includes a cap opener 464 positioned relative to bi-directional rack conveyor 32 (column 4, lines 40-43). The rack conveyor having a plurality of vials and transporting the vials along the test equipment, i.e. pipette probe (column 47, lines 7-24). Clark *et al* teach the pipetting probe integrated with the cap actuator station 464 and system controller such that opening of the reagent cap causes movement to the pipetting probe to begin pipetting and vice versa. The capped-closure 450 for the reagent containers 441 comprise a closure 452 fitting on the opening 442 and a cap assembly 454 and 454(b) of the cap functions as a tab lever (e.g. catch) engaged by the linear actuator. The housing 466 has a bracket 470 for mounting the cap

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actuator station 464 in a fixed position above the reagent carousel 32 (FIG. 3). The cap actuator station 464 further comprises opening pins 472 extending through a pin block 473 and being actuated by the drive motor 468 to move downwardly against the tab lever 454(b) of the cap 454 causing it to pivot on the pin 461 to pull the stopper 454(a) out of the closure 452 and flip the cap 454 from the closed position as shown in FIG. 35 to the desired open position 454' as shown in FIG. 34. The cap actuator station 464 further comprises a cap actuator 474 which includes three valve-shaped heads shown in an inactive position with the opening pins 272 extending downwardly from the pin block 473. The heads of the cap actuator 474 are driven by the drive motor 468 downwardly against the cap 454 to return it from the open position 454' as shown in FIG. 34 to the closed position shown in FIG. 35. This downward motion or positioning is also used in conjunction with the rotational motion of the reaction carousel 32 to cause the heads of the cap actuator 474 to drag along the top of the cap 454 to force it down to the closed position. In operation, the reagent carousel 32 rotates the desired reagent containers 441 (FIG. 32) to an opening position below the cap actuator station 464 for the opening pins 472 to contact the tab lever 454(b) to open the cap 454 to its substantially vertical open position 454' as shown in FIG. 34 and described above. The reagent carousel 32 then rotates the reagent containers 441 to a locking position under the cap actuator station 464 avoiding contact with the opening pins 472, but driving the heads of the cap actuator 474 into frictional contact with the top end of the cap 454 to push it from the open position 454' to the locked-open position 454" (FIG. 32) where the cap 454 is locked in place by an internal spring mechanism (not shown) as described above. In order to close the cap 454 of the capped-closure 450, from either the open position 454' or the locked-open position 454", the reagent carousel 32 moves the reagent

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containers 441 so that the top of the cap 454 is moved into frictional contact with either the opening pins 472 or the heads of the cap actuator 474 partially lowered to drag along the top of the cap 454 and overcome the force of the internal spring, thereby returning the cap 454 to a partially closed position or the soft seal position with the stopper 454(a) in the opening of the closure 452 (column 45, line 15-column 46, lines 36).

***Allowable Subject Matter***

4. Claims 9, 11, 14-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to teach or suggest the specific structure for translating movement between the pipetter and plunger which includes two rocker arms, stop rod, the stop rod being connected to and positioned between the two rocker arms and also being connected to the pipetter, such that the stop rod moves with the pipetter.

***Response to Arguments***

6. Applicant's arguments with respect to claim 7,8, 10 have been considered but are moot in view of the new ground(s) of rejection. See above Office Action.

***Conclusion***

7. No claims allowed.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Bex whose telephone number is (703) 306-5697. The examiner can normally be reached on Mondays-Thursdays, alternate Fridays from 6:00 am to

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3:30 pm EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 308-4037.

The fax number for the organization where this application or proceeding is assigned is (703) 872-9310 for official papers prior to mailing of a Final Office Action. For after-Final Office Actions use (703) 872-9311. For unofficial or draft papers use fax number (703) 305-7719. Please label all faxes as official or unofficial. The above fax numbers will allow the paper to be forwarded to the examiner in a timely manner.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

*Kathryn Bex*

P. Kathryn Bex  
Patent Examiner  
AU 1743  
March 26, 2003

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